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REPORT
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APEX PROJECT, NEVADA LAND TRANSFER AND AUTHORIZATION ACT OF 1989

JULY 6 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Filed under authority of the order of the Senate of June 22 (legislative day, January 3), 1989

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 1485]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1485) to direct sale of certain lands in Clark County, NV, to meet national defense and other needs; to authorize sale of certain other lands in Clark County, NV; to further the ability of the United States to recover for damages to certain marine and other resources of the National Park System; and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Apex Project, Nevada Land Transfer and Authorization Act of 1989".

SEC. 2. FINDINGS AND DEFINITIONS.

(a) FINDINGS.—Congress finds the following:

(1) The only two domestic producers of ammonium perchlorate ("AP"), a principal component of solid rocket fuel essential to the Nation's defense and space programs, are Pacific Engineering and Production Company, Incorporated ("Pepcon") and Kerr-McGee Chemical Corporation ("Kerr-McGee"), which established production facilities near the city of Henderson in Clark County, Nevada ("the county"). On May 4, 1988, an explosion destroyed the Pepcon plant, thereby substantially reducing the Nation's capacity to produce solid rocket fuel.

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(2) A commission subsequently appointed by the Governor of Nevada to examine the adequacy of existing policies and regulations pertaining to the manufacture and storage of certain industrial materials has recommended new policies which imply the desirability of relocating both some of Kerr-McGee's AP production and storage facilities and also other industries to a less densely populated part of Clark County, but within reasonable distance of the present work force.

(3) The Department of Defense and the National Aeronautics and Space Administration have identified an urgent need to replace the domestic ammonium perchlorate production capacity lost in the Pepcon accident and to firm up existing production capabilities in order to meet current shortages and long-term requirements.

(4) The county has identified as the preferred site for the relocation of Kerr-McGee's AP facilities approximately three thousand seven hundred acres of land ("Kerr-McGee Site"), which is part of approximately twenty-one thousand acres of Federal lands, identified by the county as the "Apex Site", managed by the Bureau of Land Management ("BLM"). The county has advised the BLM it would like to purchase some or all of the lands comprising the Apex Site for development as a heavy-industry use zone, to locate potentially hazardous facilities. Orderly and appropriate development of such an industrial zone, in a manner consistent with public safety, protection of environmental and other values, and relevant State and Federal policies and programs (including the national defense) would be preferable to development of the lands comprising the Apex Site in an unplanned manner.

(5) The Federal lands comprising the Apex Site are presently classified for retention and multiple-use by the applicable BLM land use plan. At the time the current land use plan was developed, disposal of large parcels of land immediately outside the Las Vegas Valley was not identified as a possibility. However, the expeditious transfer of the Kerr/McGee Site to Clark County for resale to Kerr-McGee, and transfer of necessary associated rights-of-way to the county, will serve an important national need which cannot be served as well on non-Federal land in Clark County and which outweighs other existing and potential public uses of the lands which would be served by maintaining them in Federal ownership.

(6) Kerr-McGee has prepared an environmental assessment on the proposed transfer of the Kerr-McGee Site and supporting utility and transportation rights-of-way, dated April 1989, entitled "Apex Nevada Land Transfer Proposal and Proposed Kerr-McGee Ammonium Perchlorate Facility", which identifies certain environmental impacts likely to result from the transfer of the site and supporting rights-of-way to the county which would be mitigated with various control measures. Any transfer by the United States of lands within the Apex Site should be conditioned upon provision of all measures appropriate to prevent or mitigate adverse environmental impacts.

(7) Lands within the Apex Site provide habitat for the desert tortoise. The BLM, recognizing that the desert tortoise habitat found in Nevada, and elsewhere, is being significantly affected, especially within the Mojave Desert, by the rapid development associated with industrial growth and by other human activities, has prepared a rangewide plan for desert tortoise habitat management on the public lands. The goal of this plan is to ensure that viable desert tortoise populations will continue to exist through cooperative resource management aimed at protecting the species and its habitat. The BLM's implementation of this plan should be accelerated.

(8) Lands within the Apex Site are close to Nellis Air Force Base and to public lands withdrawn for use by the Air Force as part of the Nellis Air Force Range complex. Nellis Air Force Base is the most active military airfield in the United States (with many of the aircraft using the base carrying live ordnance) and, together with the Nellis Air Force Range, constitutes a unique facility that plays a vital role in maintaining the combat capability of the Air Force's tactical units. Maintaining the capability of Nellis Air Force Base to fulfill its mission must be a central part of any decisions concerning future use or disposition of the lands within the Apex Site.

(b) DEFINITIONS.—As used in this Act, the following terms shall have the following meanings:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "lands" means lands and interests therein.

(3) The term "country" or "Clark County" means Clark County, Nevada.

(4) The term "Kerr-McGee" means the Kerr-McGee Chemical Corporation.

(5) The term "BLM's Desert Tortoise Plan" means the plan entitled "Desert Tortoise Habitat Management on the Public Lands: A Rangewide Plan", approved November 14, 1988.

(6) All other terms shall have the same meaning as such terms have when used in the Federal Land Policy and Management Act of 1976.

SEC. 3. KERR-McGEE SITE TRANSFER.

(a) DIRECTED SALE.—Subject to all valid existing rights, the Secretary is directed to convey the public lands comprising approximately three thousand seven hundred acres designated as "Area 1" and "Area 2" within the "Kerr-McGee Site" on the map entitled "Apex Heavy-Industry Use Zone" dated May 1989, to Clark County, Nevada, solely for sale to Kerr-McGee, in return for payment of the lands' appraised fair market value, as determined by the Secretary in accordance with established appraisal practices. However, the lands within Area 1 shall not be conveyed unless and until the Secretary has received a written commitment from Clark County and Kerr-McGee that whichever is offered the opportunity to purchase the lands within Area 2 will do so at such lands' appraised fair market value when the lands are offered pursuant to subsection (c) of this section.

(b) RIGHTS-OF-WAY.—Subject to all valid existing rights, the Secretary is directed to grant utility and transportation rights-of-way to Clark County for the connection of existing electric power, water, natural gas, telephone, railroad and highway facilities to the Kerr-McGee Site, all as generally depicted on the map entitled "Rights-of-Way and Proposed Access and Utility Locations" dated May 1989. Each right-of-way shall not exceed two hundred feet in width and shall not preclude the Secretary from permitting other uses of the affected lands compatible with the uses for which such rights-of-way are granted. Clark County may permit other parties to use the lands covered by such rights-of-way for some or all of the purposes specified in this subsection.

(c) TIMING, ETC.—(1) Subject to subsections (a) and (b) of this section, the Secretary shall offer to sell to Clark County the lands within the Kerr-McGee Site depicted as Area 1 and shall offer to grant the rights-of-way described in subsection (b) of this section to Clark County within thirty days of the date of enactment of this Act, but the Secretary's duty to transfer such lands and rights-of-way shall not lapse if they are not offered to the county within the prescribed time. Such sale shall be for fair market value, as determined by the Secretary in accordance with established procedures of the BLM. If Clark County fails to purchase such lands within sixty days of receiving the Secretary's offer, the lands and rights-of-way shall be offered to Kerr-McGee for sale and grant on the same basis, and subject to Kerr-McGee's entering into an agreement with the Secretary similar to the agreement described in section 6(a). If within sixty days after such offer, Kerr-McGee fails to purchase such lands, the lands shall become subject to the authorization provided for in section 4 of this Act, and the total acreage authorized for disposition under this section shall be increased accordingly.

(2) If the lands within Area 1 are purchased pursuant to paragraph (1) of this subsection, upon completion of a survey of the boundaries of Area 2, the Secretary shall offer to sell to the purchaser of Area 1 the lands within Area 2 at their appraised fair market value, as determined by the Secretary in accordance with established procedures of the BLM.

(3) Each right-of-way granted pursuant to this section shall be subject to rental payments and other conditions provided for in applicable law, including the Federal Land Policy and Management Act of 1976 and this Act. The amounts received by the United States from sales of lands covered by this section shall be distributed pursuant to laws generally applicable to sales of public lands.

SEC. 4. AUTHORIZATION FOR ADDITIONAL TRANSFERS.

(a) SALE AUTHORIZED.—Notwithstanding any BLM land use plan calling for retention of the Apex Site and notwithstanding the reporting requirements and competitive bidding requirements of section 203 of the Federal Land Policy Management Act of 1976, the Secretary is authorized, subject to any other requirements of law, including the conditions of this section, to sell to Clark County some or all of the lands within the Apex Site, depicted on the map referred to in section 3(a), that lie outside the boundaries of the Kerr-McGee Site (as depicted on such map) for fair market value as determined by the Secretary in accordance with established appraisal procedures.

(b) REQUIREMENTS AND CONDITIONS.—If, no later than one year after the date of enactment of this Act, the county demonstrates to the satisfaction of the Secretary that the county has designated the lands comprising the Apex Site as a heavy-use industrial zone, pursuant to applicable laws of the State of Nevada, and has adopted

a plan for the development of some or all of such lands accordingly, the Secretary shall offer to enter into a land sales agreement with Clark County for the transfer of some or all of such lands to the county by one or more direct sales pursuant to this section over a period not to exceed ten years. Such agreement shall provide for purchasers of parcels of the lands within the Apex Site, with any specific parcels to be sold to be determined by the Secretary, in response to proposals by the county and after consultation with the Secretary of the Air Force concerning any potential impact of any such sale on activities associated with Nellis Air Force Base. The purchase price for each parcel shall be its appraised fair market value at the time of the sale, but any agreement between the county and the Secretary under this section shall provide that if the county sells any such parcel or portion thereof, the county shall pay to the United States an amount equal to 50 per centum of the amount by which the amount received by the county exceeds 110 per centum of the sum equal to the total amounts expended by the county for acquisition of such parcel or portion thereof, for improvements to such parcel or portion thereof, and for preparation of such parcel or portion thereof for sale.

(c) RIGHTS-OF-WAY.—Pursuant to applicable law, the Secretary may grant Clark County such rights-of-way on public lands as may be necessary to support the development as a heavy-use industrial zone of some or all of the lands identified in subsection (a).

(d) PROCEDURES.—Except as specified in subsection (a) nothing in this section shall relieve the Secretary from compliance with all laws applicable either to the transfer of some or all of the lands identified in subsection (a) or to the granting of any rights-of-way, including, but not limited to, the National Environmental Policy Act of 1969. Unless otherwise specified in this Act, sales of lands pursuant to this section shall be made and patents or other documents of conveyance shall be issued as if such sales were made pursuant to the Federal Land Policy and Management Act of 1976.

(e) WITHDRAWAL, ETC.—(1) Subject to all valid existing rights, the lands within the Apex Site (depicted on the map referred to in section 3(a)) are hereby withdrawn from all forms of entry and appropriation under the public land laws, including the mining law, and from operation of the mineral leasing and geothermal leasing laws, but shall remain available for disposition under the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.) and for sale under this Act or other applicable law. This withdrawal shall continue in effect until a parcel of land affected by such withdrawal is sold, if such sale includes the right, title and interest of the United States in the minerals in such parcel. If the county or another party to whom such parcel is offered, elects not to seek to purchase the minerals in any such parcel, such parcel shall remain withdrawn from entry, location, or patent under the mining laws but after receipt by the Secretary of notification that the county or other offeree does not seek to purchase such minerals, such parcel shall be open to operation of the mineral leasing and geothermal leasing laws. The withdrawal made by this subsection shall continue for twelve years after the date of enactment of this Act or until otherwise provided by an Act of Congress enacted after the date of enactment of this Act.

(2) Before offering any parcel for sale pursuant to an agreement with the county under this section, the Secretary (in addition to other requirements of law) shall consider whether development of such parcel as part of a heavy-use industrial zone, including any appropriation mitigation measures, would be inconsistent with BLM's Desert Tortoise Plan.

(f) COGENERATION PROJECT.—Notwithstanding any withdrawal of the Apex Site (depicted on the map referred to in section 3(a)), and subject to the provisions of applicable law, the Secretary may grant to holders of valid existing mill-site claims on such lands such rights-of-way as may be necessary for the construction, operation, and maintenance of facilities required in the cogeneration of electricity at the site of existing mill-site operations on such claims, unless and until the land subject to such claims is transferred out of Federal ownership. No such grant shall be made unless and until all environmental studies required in connection with such construction, operation, and maintenance have been completed and any necessary mitigation measures have been agreed to.

SEC. 5. RESERVATION OF RIGHT-OF-WAY CORRIDORS.

The transfer of lands pursuant to section 4 of this Act shall be subject to the reservation to the United States of the right-of-way corridors depicted on a map entitled "Right-of-Way Corridors Across the Apex Heavy Industrial Zone" dated Map 1989. These corridors shall be administered by the Secretary, who may grant rights-of-way over, upon, under and through the corridors consistent with applicable law.

In the administration of such corridors, the Secretary shall, so far as feasible, locate rights-of-way so as to have the least possible impact on any industrial uses. Nothing in this Act shall be construed as restricting the authority of the Secretary, under the Federal Land Policy and Management Act of 1976 or other applicable law, to reserve or grant any other rights-of-way with respect to such lands, in addition to the rights-of-way described on such map.

SEC. 6. ENVIRONMENTAL CONSIDERATIONS.

(a) KERR-MCGEE SITE.—The Secretary shall not make the conveyance directed by section 3 until Kerr-McGee and Clark County have entered into a written agreement with the Secretary whereby Kerr-McGee and the county commit to undertake the measures specified in the document identified in section 2(a)(6) in order to mitigate adverse effects on wildlife and other resources and values resulting from the use of such lands for industrial purposes. At the request of the Secretary, the Attorney General of the United States may bring an appropriate legal action to enforce such agreement.

(b) BLM REPORTS.—(1) No later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report as to the funds and personnel required to fully implement BLM's Desert Tortoise Plan.

(2) As soon as possible after the date of enactment of this Act, the Secretary, acting through the Director of the Bureau of Land Management, shall arrange for a class-three soil survey of public lands in Clark County, to assist in the implementation in such county of BLM's Desert Tortoise Plan and other aspects of the management of the public lands in such county.

(3) As soon as possible after the date of enactment of this Act, the Secretary shall invite public proposals for the designation, pursuant to the Federal Land Policy and Management Act of 1976, of areas of critical environmental concern whose designation would further the implementation of BLM's Desert Tortoise Plan or otherwise assist in the protection of resources and values of public lands in Nevada. The Secretary shall provide a reasonable period for receipt of such proposals, shall evaluate all proposals received, and shall take such action thereon as the Secretary considers appropriate.

(4) As soon as possible after the date of enactment of this Act, the Secretary shall consider the desirability of restricting or eliminating uses of public lands in the Paiute Valley which may conduct with implementation of BLM's Desert Tortoise Plan with respect to those lands. No later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report concerning the results of the Secretary's actions pursuant to this paragraph.

(c) OTHER REPORTS.—(1) At the time that the President submits a budget request for fiscal year 1991, and annually thereafter for 15 years, the Secretary shall submit to the Congress a statement of the total amounts received by the United States as the result of sales of public lands described in this Act, and an account of the distribution of such receipts.

(2) No later than ninety days after the date of enactment of this Act, the Secretary shall evaluate the desirability of acquisition of the lands specified in appendix A to the report of the Committee on Interior and Insular Affairs of the United States House of Representatives to accompany H.R. 1485 of the 101st Congress (House Report 101-79). Such evaluation shall be based solely on the resources and values of such lands and the extent to which national policies and programs for management of such resources and values would be furthered by such acquisition. Promptly after the completion of such evaluation, the Secretary shall report the results thereof to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, and the Representatives and Senators from the State of Nevada.

SEC. 7. MAPS AND LEGAL DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary shall file maps and legal descriptions of the lands identified in sections 3, 4, and 5 with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical

errors in such legal descriptions. The maps and legal descriptions shall be on file and available to public inspection in the offices of the Director of the BLM.

2. Amend the title so as to read: "An Act to direct the sale of certain lands in Clark County, Nevada, to meet national defense and other needs; to authorize the sale of certain other lands in Clark County, Nevada; and for other purposes.".

PURPOSE OF THE MEASURE

The purpose of H.R. 1485, as ordered reported, is to provide for the conveyance of certain Federal lands to Clark County, Nevada, for national defense and other purposes.

BACKGROUND AND NEED

On May 4, 1988, an explosion destroyed the Pacific Engineering and Production Corporation (Pepcon) facility in Henderson, Nevada. The blast, which killed 2 people and resulted in over $75 million in damage, occurred at Pepcon's facility which manufactures and stores the chemical ammonium perchlorate (AP).

AP is a strong oxidizer chemical compound and is a major component of the solid propellant used by NASA in the space shuttle program and by the Department of Defense in numerous missile and rocket programs. In fact, adequate and stable supplies of AP are a vital component of both the space program and the Nation's defense readiness capability.

Pepcon and Kerr-McGee Corporation are the only two domestic producers of this important chemical. The Pepcon plant is in the process of being rebuilt in Utah. Kerr-McGee still produces AP at its facility which is also located in Henderson, Nevada. Kerr-McGee is anxious to move its plant to a less populated area in the same vicinity to help ensure public safety and avoid another Pepcon-like disaster. Such a move was recommended in a report prepared by a blue-ribbon panel appointed by the Governor of Nevada to study the Pepcon disaster. The State of Nevada and Clark County support Kerr-McGee's efforts to seek a safer location for the production of this important but dangerous chemical compound. The Department of Defense and the National Aeronautics and Space Administration also strongly support the relocation to help guard against future supply disruptions.

Because almost 90 percent of Clark County is federally owned, it has been difficult to find a site for such a facility on non-Federal lands. However, a potential site comprising approximately 3,700 acres ("Kerr-McGee Site") located within a tract comprising approximately 20,000 acres of federal land known as the "Apex Site", has been located north of Las Vegas and appears suitable to meet Kerr-McGee's needs. In addition, Clark County has informed the BLM that it would like to purchase the remaining 17,000 acres of the Apex Site for development of an industrial park.

H.R. 1485 would direct the sale of the 3,700 acre Kerr-McGee site to the County for transfer to Kerr-McGee and authorize the sale of the remaining lands within the Apex Site to the county for industrial park development. Both sales would be made at fair market value. Although the Federal Land Policy and Management Act (FLPMA) authorizes the sale of BLM lands under certain conditions, acreage limitations, competitive bidding requirements, current BLM land management plans for the area, and other restric-

tions in FLPMA make special authorizing legislation necessary and desirable in this instance.

Because of the need to move as expeditiously as possible on the relocation of the AP facility, the legislation reported by the Committee directs the Secretary to convey the 3,700 acre Kerr-McGee site to Clark County, solely for sale to Kerr-McGee, in return for fair market value. The legislation then authorizes but does not direct the sale of the remaining Apex Site lands to Clark County over the next 10 years. Sale of this land, either as a single tract or in individual parcels, is also to be for fair market value.

LEGISLATIVE HISTORY

H.R. 1485 passed the House of Representatives on June 20, 1989. A companion measure, S. 624, was introduced by Senators Reid and Bryan on March 16, 1989. A Subcommittee hearing was held on S. 628 on June 8th.

At the business meeting on June 21, 1989, the Senate Committee on Energy and Natural Resources ordered H.R. 1485, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 21, 1989, by a majority vote of a quorum present, recommends that the Senate pass H.R. 1485 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 1 nay, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Wallop
Mr. Bumpers	
Mr. Ford [1]	
Mr. Metzenbaum	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Conrad [1]	
Mr. Heflin	
Mr. Rockefeller [1]	
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Garn	
Mr. McConnell [1]	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENTS

During the consideration of H.R. 1485, the Committee amended the measure to delete Title II of the House-passed bill and make

numerous conforming changes in Title I and the title of the Act to reflect this deletion.

Title II of H.R. 1485 deals with liability for destruction or injury of resources located in marine or Great Lakes areas within the National Park System. These provisions are unrelated to the Nevada land conveyances.

The Committee has not conducted a hearing on the issues raised in Title II and feels it important to do so before taking any substantive action regarding these provisions. In deleting these provisions at this time, the Committee takes no position on the substantive issues presented in Title II.

Except for conforming changes, the provisions of the Committee reported bill dealing with the Nevada land conveyances are identical to the House-passed version.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title for the legislation—"Apex Project, Nevada Land Transfer and Authorization Act of 1989".

Section 2 contains a number of findings and definitions of terms. The findings deal with the nature of the concerns prompting relocation and expansion of the Kerr-McGee facilities; the status of the public lands addressed in this title; the studies done concerning proposed lands addressed in this title; the studies done concerning proposed use of some of those lands for the Kerr-McGee relocation and expansion; and the concerns with respect to environmental and other (especially wildlife) values arising from that proposal, and concerns relative to the proximity of the lands to Nellis Air Force Base.

The definitions are self-explanatory.

Section 3 provides for sale of the particular tract (referred to as the "Kerr-McGee Site") whereon Kerr-McGee Chemical Company proposes to relocate and expand its ammonium perchlorate production facilities.

Subsection (a) would direct the Secretary to sell the lands (both surface and subsurface) within the Kerr-McGee Site, for fair market value and subject to valid existing rights. The subsection references a map depicting the overall site as divided into two unequal parts—"Area 1" and "Area 2". This division reflects the desire of all parties to expedite the relocation and expansion of Kerr-McGee's facilities: "Area 1" is within internal boundaries that are already designated according to the rectangular survey system, while "Area 2" is the remainder of the overall Kerr-McGee Site and will require a new survey. However, the two areas are both to be conveyed to the same party.

Subsection (b) would direct the Secretary to grant utility and transportation rights-of-way to Clark County so as to connect existing electric, gas, telephone, and highway facilities to the Kerr-McGee Site.

Subsection (c) would establish various timeframes within which the Secretary is to offer to sell the Kerr-McGee Site to Clark County. These provisions are self-explanatory.

This subsection also provides that rights-of-way granted pursuant to section 3 shall be subject to rental payments and other provi-

sions, in accordance with applicable existing law, and that receipts from sale of the lands within the Kerr-McGee Site are to be distributed pursuant to laws generally applicable to sales of public lands.

Section 4 deals with the additional Nevada lands covered by this Act.

Subsection (a) would authorize (but not require) the direct sale to Clark County of some or all of the approximately 17,000 acres (in addition to the Kerr-McGee Site) of BLM-managed public lands within the so-called "Apex Site", provided the conditions of the bill are met. This subsection specifies that sales are to be for fair market value as determined by the Secretary under established BLM appraisal procedures.

Subsection (b) would set forth preconditions to any sales under this section, and establish requirements applicable to such sales. The subsection provides that the Secretary would be authorized to enter into a sales agreement with the county, but only if the county, within one year after enactment, demonstrates that it has met all conditions of Nevada law to designate the lands covered by section 4 as a heavy-use industrial zone. The agreement would provide for one or more direct sales to the county over a 10-year period. The county would make proposals to the Secretary of the Interior concerning which parcel or parcels of lands within the overall Apex Site the county wished to buy, but the Secretary of the Interior would decide which if any such parcels would be offered to the county. In determining whether to offer a parcel for sale, the Secretary would be required to consult with the Secretary of the Air Force concerning any potential impact on such sale on activities associated with Nellis Air Force Base.

The requirement for consultation with the Air Force reflects the Committee's intention that all parties completely understand the possible effects that such land use decisions might have on the vital role that Nellis Air Force Base, and the activities associated with it, play in maintaining the military readiness of the nation. It is the firm intention of the Committee that the Secretary of the Interior take into account the concerns of the Air Force, and that heavy weight be given to the views of the Air Force with respect to any proposals for sale of any lands within the Apex Site.

This subsection also would require that the county pay fair market value (determined at the time of sale) for each parcel offered by the Secretary and bought by the county, and that if the county shall resell any of the land in the Apex Site for an amount exceeding 100% of the sum of the county's purchase price plus the cost of improvements and preparation of the land for sale, the county will then pay to the United States an amount equal to half of such excess.

Subsection (c) is self-explanatory.

Subsection (d) would make explicit that except as specified in subsection (a) nothing in section 4 would relieve the Secretary from compliance with any of the laws (such as the National Environmental Policy Act of 1969) applicable either to the sale of any of the lands in the Apex Site other than the directed conveyance of the Kerr-McGee Site or to the granting of any right-of-way. It would also specify that, except to the extent that other parts of the bill provide differently, sales of land under section 4 would be

made (and patents or other documents issued) as if such sales were made pursuant to the Federal Land Policy and Management Act of 1976 ("FLPMA"). With respect to this latter provision, Section 208 of FLPMA (43 U.S.C. 1718) requires the Secretary of the Interior to insert in any such patent or other document or conveyance such terms, covenants, conditions, and reservation as the Secretary deems necessary to insure proper land use and protection of the public interest. The Committee expects the Secretary to comply with this requirement, and in particular to take care to protect the public interest in avoiding adverse effects on overflight operations by military aircraft based at Nellis Air Force Base that otherwise might result from development of lands within the Apex Site. The Committee expects that the Secretary, in making the Kerr-McGee Site available for purchase by the county or Kerr-McGee, will take appropriate steps to avoid possible future problems for the Air Force. Similarly, the Committee expects that Clark County will, through zoning or otherwise, take the necessary steps to avoid a repetition of the situation at Henderson, where urbanization encroached on a formerly remote site used for the production of ammonium perchlorate.

Subsection (e) would temporarily withdraw the lands covered in the Act (including the Kerr-McGee Site) from location, entry or appropriation under the public land laws and from the mining, mineral leasing, and geothermal leasing laws in order to permit the contemplated sale. They would remain open to transfer under the Recreation and Public Purposes Act however. This withdrawal would remain in effect until transfer of an affected parcel pursuant to a sale that included both the surface estate and the minerals; if the purchaser of such a parcel should elect not to seek to buy the minerals, the withdrawal would continue for 12 years after enactment of the bill, except that upon notice that the purchaser did not wish to buy the minerals, the relevant lands would be open to mineral or geothermal leasing. By excluding the Recreation and Public Purposes Act from the withdrawal, the Committee simply wants to keep the option of Recreation and Public Purposes Act conveyances open. It does not intend that lands acquired pursuant to the Recreation and Public Purposes Act be used for any purpose other than those authorized by that Act.

Subsection (e) would also require the Secretary, before offering for sale any lands (other than the Kerr-McGee Site) covered by the Act to consider whether development of the lands as part of a heavy-use industrial zone (including any appropriate mitigation measures) would be inconsistent with BLM's rangewide plan for management of desert tortoise habitat.

Subsection (f) addresses the status of certain claims located within lands covered by the Act. It would provide that despite any withdrawal of those lands the Secretary could (subject to applicable law and after the completion of all necessary environmental studies) grant holders of valid existing mill-site claims necessary rights-of-way for construction, operation, and maintenance of facilities for cogeneration of electricity at the site of existing mill-site operations on such claims, unless and until the land subject to the claim is transferred out of Federal ownership. This subsection responds to concerns raised by the Georgia-Pacific Corporation, which was pur-

suing such a cogeneration project when the lands were administratively withdrawn pending consideration of this legislation. The Committee takes no position with respect to the validity or invalidity of any particular claim held by any party.

Section 5 would provide that the transfer of lands (outside the Kerr-McGee Site) would be subject to various specific right-of-way corridors, as identified on an appropriately-referenced map. Neither this subsection nor any other portion of the bill would limit the ability of the Secretary of the Interior, under FLPMA or other existing law, from reserving other rights-of-way with respect to these lands. The Committee notes that Section 507 of FLPMA authorizes the Secretary to provide to other Federal agencies rights-of-way "over . . . the land administered by him, subject to such terms and conditions as he may impose." The Committee expects that the Secretary will fully utilize his authority in this regard so as to afford to the Air Force (through aviation easements prior to sale of affected lands or otherwise) all necessary protection against interference with activities associated with the Nellis Air Force Base.

Subsection 6 addresses a variety of environmental considerations.

Subsection (a) would provide that the Kerr-McGee Site would not be conveyed unless and until the county and Kerr-McGee enter into an enforceable legal agreement to undertake the mitigation measures specified in the environmental assessment prepared by Kerr-McGee. A partial list of such measures is set forth in greater detail in Appendix B of the House report on this measure (House Report 101–79).

Subsection (b) would require BLM to take several steps. Within one year after enactment, BLM would be required to provide to the Committee on energy and Natural Resource of the Senate and the House Committee on Interior and Insular Affairs, an estimate of the funds and personnel required to fully implement BLM's rangewide desert tortoise plan. Further, as soon as possible, BLM would have to arrange for a class-three soil survey of public lands in Clark County, to assist in implementation of that plan. In addition, public proposals would be requested for possible designation of areas of critical environmental concern in Nevada. Additionally, BLM is to study and report on the desirability of restricting or eliminating competing uses of public lands in the Paiute Valley which pay conflict with implementation of the BLM desert tortoise plan.

Subsection (c) relates to possible land acquisition. Paragraph (1) would require that for 15 years there is to be a separate reporting of the amount of money received by the United States from sales of public lands under the bill. This will facilitate a comparison of moneys received from such sales with moneys reinvested in acquisition of environmentally-sensitive lands in Nevada. Paragraph (2) would require submission, within 90 days after enactment, of an evaluation (based solely on the resources and values of the lands and the extent to which their acquisition would further national programs and policies) of the desirability of acquisition by the United States of the environmentally-sensitive lands listed in Appendix A to the House report accompanying this measure (House Report 101–79).

Section 7 would require the filing with the Committee on Energy and Natural Resources of the Senate and the House Committee on Interior and Insular Affairs of maps and legal descriptions of the lands covered by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 1989.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1485, the Apex Project, Nevada Land Transfer and Authorization Act of 1989, as ordered reported by the Senate Committee on Energy and Natural Resources on June 21, 1989.

We estimate that enactment of this legislation would result in net additional receipts to the federal government over the next ten years from the sale of lands to Clark County, Nevada. While precise figures are not available because the land has not been appraised, we expect the federal government to receive between $1 million and $4 million in fiscal year 1990 for the sale of the first parcel. Additional receipts could be realized in future years as more land is sold, but it is impossible to predict the magnitude or the timing of these receipts at this time. Costs totaling about $2 million over the next five years would partially offset these receipts.

Purpose

H.R. 1485 would direct the Department of the Interior to sell to Clark County, Nevada, approximately 3,700 acress of federal land in exchange for the payment by the county of the land's fair market value. The land would purchased by the county solely for resale to Kerr-McGee Chemical Corporation. Certain specified rights-of-way for access and servicing of the site would also be granted to the county.

Clark County would also be given the exclusive right for ten years to purchase, for fair market value at the time of sale, an additional 17,000 acres of federal land adjacent to the Kerr-McGee site. These lands would only be available for sale after certain zoning activities and environmental studies have been carried out. If the county subsequently sells any of the land, it would share its profits with the federal government according to a formula specified in the act.

The act also contains a number of reporting requirements.

Estimated budget impact

The federal government would receive the fair market value of any land sold to Clark County as a result of this act. None of the land available for sale has been appraised at this time. However,

we expect that the initial 3,700-acres site would be sold to Clark County in fiacal year 1990 for between $1 million and $4 million. Additional lands could be sold in the future for their market value at the time of the sale. Because the lands will be apprised only when sales are pending, it is impossible at this time to estimate the timing or magnitude of receipts from these possible future sales.

Information from the Bureau of Land Management (BLM) indicates that enactment of H.R. 1485 would necessitate additional work for the agency, including land appraisals, cadastral surveys, wildlife damage mitigation activities, and various reporting requirements. Based on information from BLM, CBO expects these activities to cost approximately $0.4 million annually over the next five years.

We do not expect enactment of H.R. 1485 to result in additional costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVULATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1485. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1485, as reported.

EXECUTIVE COMMUNICATIONS

On May 4, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on the Senate companion measure, S. 624. On May 9, the Committee requested similar reports from the Department of Defense and the National Aeronautics and Space Administration. The views of NASA are set forth below. The reports from DOI and DOD had not been received at the time the report on H.R. 1485 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior and the Air Force follows:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
Washington, DC, June 7, 1989.

XC:MAM:tsc:XC89-01281f.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in further response to your request for the views of the National Aeronautics and Space Administration on the bill S. 624, the "Apex Project, Nevada Land Transfer and Authorization Act of 1989."

S. 624 would provide for the sale of approximately 20,840 acres of Federal land, known as the Apex Site, to Clark County, Nevada. Of this acreage, the Secretary of the Interior would be directed to convey 3,840 acres to Clark County solely for sale to the Kerr-McGee Chemical Corporation for the relocation of that corporation's facilities devoted to the production of ammonium perchlorate. The remaining acreage would be transferred to Clark County over a ten year period for the development of an industrial park.

NASA is pleased to have this opportunity to discuss the situation regarding ammonium perchlorate (AP). In this report, we would like to discuss NASA's experience with this issue over the past year. NASA is keenly interested in this matter, since AP is the key ingredient of solid rocket fuel. The Space Shuttle Solid Rocket Motor (SRM) is the largest single user of AP with over 1,700,000 pounds required per flight set. Furthermore, many expendable vehicles also use AP for solid propellants. These include the Titan III, Titan IV, Delta II, and Scout booster systems, used for both government and commercial launches. AP shortages directly impact these vital government and commercial programs.

NASA's requirements are a significant portion of the North American demand—about 38 per cent, for example, in calendar year 1989. Accordingly, the explosion of May 4, 1988, at the Pacific Engineering and Production Company of Nevada (PEPCON), caused great concern at NASA since the result was a reduction by half of this country's ability to produce AP. At the time of the accident, PEPCON's annual production rate was 20 million pounds per year (MPY) with a maximum production capacity of 40 MPY. Kerr-McGee Chemical Company was producing 32 MPY with a capacity for production of 40 MPY. The effect of the accident on worldwide capacity of AP was to go from a 30 per cent excess to a 35 per cent deficit. The U.S. capacity for NASA and the DOD went from 35 per cent excess to 25 per cent deficit.

Federal action was essential to restore the lost capacity as rapidly as possible. Toward that objective, NASA and DOD embarked on a plan to assure the rebuilding of a 30 MPY facility at a remote site. Government involvement is being provided in the form of a commitment to place orders for Solid Rocket Motors with the prime contractor, which will require them to purchase sufficient quantities of ammonium perchlorate to allow for recovery of capital investments over a period of seven years.

As a reaction to the PEPCON disaster, community sentiment in Henderson, Nevada, is disposed to relocate Kerr-McGee's ammonium perchlorate plant. Kerr-McGee has stated that its proposed

plant could be completed by September 1991 and producing in support of NASA/DOD requirements. The first step in that process is selecting a suitable site that provides access to power, water, and transportation to minimize construction and operation costs and that meets all appropriate conditions for such a facility if a Federal site is to be selected, as proposed in S. 624. NASA is looking to Kerr-McGee and the Department of the Interior to select such a site at the earliest possible date. It is essential that Kerr-McGee's construction schedule be accelerated as much as possible. If it becomes necessary for any reason to close the Henderson plant, we will again be faced with a single producer and government allocations. In this connection, Western Electro Chemical Company (WECCO), a subsidiary of PEPCON, is establishing a production facility in Utah. Private financing has been procured to fund the WECCO facility, which is scheduled to begin producing AP in July.

A review of the present availability of AP is useful in appreciating NASA's concern for supplies. After the May 1989 allocation, 4 million pounds of AP will be available at Kerr-McGee. Kerr-McGee production from June to December 1989 is projected at 22 million pounds, making a total of 26 million pounds available during calendar year 1989. Meanwhile the projected government demand through 1989 is for between 34 and 40 million pounds. This constitutes a shortfall of between 8 and 14 million pounds of AP for 1989. All or some of this shortfall may be offset if the new WECCO plant comes on line this year. Estimates are WECCO 1989 production could be between 5 and 9 million pounds. During 1990, the projected shortfall of AP is estimated at 28 million pounds without WECCO production.

In summary, NASA feels there is potential for major program impacts without these production facilities. There is a projected gap between national needs and available supplies in 1989. Only the size of the deficiency is in question. There may well be significant reductions or even curtailment of vital national programs if AP production is not promptly restored.

A number of issues must be addressed in finding an alternative site for the Kerr-McGee facilitly. NASA is concerned that these decisions be made in recognition of the urgent national need for AP. We understand, however, that there may be some concerns with the site proposed by S. 624, and we defer to the Departments of Defense and the Interior to resolve those concerns and to make an appropriate recommendation on this bill.

The Office of Management and Budget had advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely,

LYNN W. HENINGER,
Acting Assistant Administrator
for Congressional Relations.

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERALS, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear here today to discuss S. 624, a bill to provide for the sale of certain Federal lands to Clark County, Nevada, for national defense and other purposes.

S. 624 would provide for the sale of approximately 20,840 acres of land in Nevada, known as the Apex Site, and presently administered by the Bureau of Land Management, to Clark County. Of this acreage, the bill would direct the sale of 3,840 acres to Clark County solely for sale to Kerr McGee. The lands would be at appraised fair market value as determined by the Secretary. The bill would authorize the Secretary to sell the balance of the tract—approximately 17,000 acres—over a 10 year period at the fair market value at the time of the agreement, with the price to be adjusted for inflation up to the date of transfer.

Kerr McGee is one of two firms which produces ammonium perchlorate, a principal component of solid rocket fuel essential to the Nation's defense and space programs. Its plant is near the city of Henderson, a populated area. It is seeking to establish a plant in a less populated area. I understand that the Apex Site meets that requirement.

Clark County seeks the balance of the Apex Site to establish an industrial park over the next 10 years.

A summary of the bill is attached to this statement.

We support S. 624 if it is amended as suggested herein. We believe that this legislation encompasses provisions for replacement of a source of materials necessary for our national defense and for other activities which are in the national interest. We do, however, object to a number of provisions of the bill which make it unacceptable. In addition, we believe some of the technical provisions of the bill should be more precise in order to avoid questions of interpretation. We will be pleased to work with Committee Staff on these technical provisions.

First we suggest that the findings section of the bill be amended to clearly state the critical security need for ammonium perchlorate and the urgent need to find an alternative site for the current Kerr McGee production facility.

As to our objections:

We have several concerns with the conveyance of the approximately 17,000 acres to the county for an industrial park. First, the bill requires NEPA compliance; then proceeds to modify that process. We note that while section 103(d) specifies compliance with NEPA, this compliance is limited by the provision that all environmental work be performed on the entire 17,000-acre tract. It will be almost impossible to meaningfully consider environmental impacts on the entire tract when the land will be developed over time for a variety of unspecified uses. In this case we would have to assume a worst case, full development scenario which might never occur—for example, development including a hazardous waste disposal site. This could necessitate a determination that all or a great part of this 17,000-acre tract is not suitable for development. We would prefer that the bill be amended to require NEPA compliance at the

time Clark County wishes to acquire a specific tract within this 17,000 acres. In that fashion, we could consider the effect of the proposed use on that specific site and, if necessary, could consider alternative locations within the 17,000 acres if the environmental review indicates problems with the proposed site.

The other alternative would be to have Clark County acquire the entire 17,000 acres in our transaction. At that time Clark County must be required to provide detailed information as to its development plans. If this option is selected to could provide for payments by the county over period of not to exceed 10 years, including interest. In addition, if this option is considered, section 203(c) of the Federal Land Policy and Management Act, requiring 90-day notice to Congress, should be waived.

We object to the provision of section 103(b) which would provide that the purchase price for each parcel within the 17,000 acre tract reflect its value at the time of agreement to convey, adjusted only for inflation up to the date of transfer. These lands will be sold over a period of 10 years. There is no justification for selling them at a price that does not reflect the value of the land at the time of sale. Adjustment for inflation does not reflect increased value of the land. The United States is entitled to receive the fair market value for its land at the time of its disposal. This is true whether lands used as the basis establishing fair market value are developed by a private company or by a State or county government. Anything short of that is not in the public interest. We also object to the requirement in section 105 to deposit funds received from the sale of the lands under this bill into a special account in the Treasury of the United States to be used to acquire environmentally sensitive lands. Revenues from the sale of Federal land should be deposited in the General Fund of the Treasury. There should not be a restriction or limitation on their use. Splintering off some funds in the manner proposed in this bill is not in the public interest. Further, any land determined to be environmentally sensitive and appropriate for Federal acquisition should be acquired using the well-established budget and appropriation process.

The Apex Site is the habitat of the desert tortoise. Any conveyance of lands in that tract must provide for mitigation measures. Any sale of land in the Apex Site, even the directed sale, must contain such provisions, and before the sale is consummated we intend to require assurance that mitigation will be accomplished. This is in accord with our established practice of proceeding on a site specific basis. If development is incompatible with their remaining on a site and will totally preclude them, provision is made for the relocation of the desert tortoise. In areas, such as security zones, which do not preclude their remaining on the site, we leave them in place. These are the guidelines we used in the Summa and Aerojet transactions. The procedure had worked well. Again, this emphasizes the need for environmental work to be done on a tract specific basis.

We understand the Air Force has concerns about conveyance of these tracts because of their proximity to Nellis Air Force Base. We defer to that agency for its views on that issue.

When we testified before the House Subcommittee on National Parks and Public Lands of the House Interior and Insular Affairs

Committee on H.R. 1485, the companion bill to S. 624, we raised the same issues as we are raising today. The full Committee, before reporting out the bill, amended it to address some of the issues we raised. I will discuss them briefly.

Our concern about NEPA compliance has been alleviated by the amendment to H.R. 1485 which allows the application of NEPA requirements to be site specific.

The provision about pricing of lands in the Apex Site has been changed to allow the fair market value price to be established for each tract as it is purchased by the county.

However, H.R. 1485 as amended contains several provisions with which we do not concur.

Section 104(e)(1) of H.R. 1485, as reported, would withdraw the lands within the Apex Site from all forms of entry and appropriation under the public land laws, including the mining laws, except for the Recreation and Public Purposes Act, and from operation of the mineral leasing and geothermal leasing laws. We want to make it clear that we do not intend to convey any of this land under the Recreation of Public Purposes Act for use as industrial park development. If the intent of this language is to allow the country to purchase some portion of the Apex Site for public purposes allowed under the Recreation and Public Purposes Act and not for industrial development, we would not object to this language.

Section 104(e)(1) of H.R. 1485, as reported, would allow Clark County or another party to whom a parcel of land on the Apex Site is offered for sale to elect not to seek to purchase the minerals. We object to this provision. The Federal Government, not the prospective purchaser, must retain the option as to whether the minerals are to be conveyed or should be retained. This is necessary to protect the public interest.

We find the reporting and other requirements in section 106(b) to be burdensome, unnecessary and sometimes duplicative.

In addition, a new title II has been added by the House Committee to H.R. 1485.

Title II of H.R. 1485 as reported by the Interior and Insular Affairs Committee would create a new cause of action for damages to certain national park resources from the operation of marine vessels. Such resources would include living and nonliving resources in both the water column and submerged areas up to the high water or high tide line in park system units. The provisions of this title would apply to both oceanic and Great Lakes areas.

Under this title, any person or vessel destroying or injuring park resources above a de minimus level would be liable to the United States for response costs and damages, unless the injury was caused by an act of God, war, or third party error, or unless previously authorized by law. Civil actions to recover damages, as well as injunctive relief, would be authorized. Payments made to the United States would be used to restore the area damaged, and direct donations for response costs could be accepted by the Secretary.

Although the goals of this title are laudable, we believe this provision would create inconsistency and confusion with respect to the issue of damages to natural resources. Moreover, with respect to damages from oil spills, the Administration already has proposed

comprehensive oil spill liability legislation to the Congress covering compensation for damages to national parks and other Federal resources. A comprehensive legislative approach such as this, for all resource damages, is essential to ensure that damages are handled in a uniform and equitable fashion that is consistent with the applicable international protocols.

We therefore recommend that title II be amended to ensure that all damages to National Park System resources resulting from oil spills be recoverable under the Administration's proposed Comprehensive Oil Pollution and Liability Compensation Act of 1989, submitted to Congress by Transportation Secretary Skinner on May 11, 1989, and not under title II.

This concludes my statement. I will be pleased to answer questions.

SUMMARY OF S. 624

S. 624 would be cited as the "Apex Project, Nevada Land Transfer and Authorization Act of 1989". Sec. 101 of the bill contains 13 congressional findings in support of the transfer of certain Federal lands to Clark County, Nevada.

Section 102 would require the Secretary of the Interior, subject to valid existing rights, to convey to Clark County, Nevada, by a standard form general warranty deed, approximately 3,840 acres of land, known as the "Kerr-McGee Site". The lands would be conveyed to Clark County solely for sale to the Kerr-McGee Chemical Corporation in return for payment of the lands' appraised fair market value, as determined by the Secretary in accordance with established appraisal practices. In addition, the Secretary would be required, subject to valid existing rights, to grant certain utility and transportation rights-of-way to Clark County for the county's subsequent grant of easement rights to Kerr-McGee for the Kerr-McGee Site. Each right-of-way could not exceed 200 feet in width and would be subject to the standard rental payments and other conditions provided for in regulations implementing title V of the Federal Land Policy and Management Act (FLPMA).

The Secretary would be required to offer to sell the 3,840 acres of land and to grant utility and transportation rights-of-way to Clark County within 30 days of the effective date of this Act. However, the Secretary's duty to transfer the lands and grant the rights-of-way would not lapse if they are not offered to the county within the prescribed time. If Clark County fails to purchase the lands within 60 days of receiving the Secretary's offer, the lands would become subject to the authorization provided for in section 103 of S. 624.

Section 103 would authorize the Secretary to transfer to Clark County up to 17,000 acres of lands within the Apex Site that lie outside the boundaries of the Kerr-McGee Site at the property's appraised fair market value as determined by the Secretary in accordance with established appraisal procedures. The Secretary would be authorized to enter into a land sales agreement with Clark County that provides for the transfer to be made in amounts and at times requested by Clark County over a period not to exceed 10 years. The purchase price for each parcel would be required to

reflect its appraised fair market value at the time of the agreement, adjusted for inflation up to the date of transfer as measured by the annual Consumer Price Index published by the Department of Labor.

Consistent with title V of FLPMA, the Secretary would be authorized to grant Clark County any rights-of-way that may be necessary to support the development of an industrial park on the lands within the Apex Site. All laws applicable to the proposed transfer would have to be complied with, including, but not limited to, the National Environmental Policy Act (NEPA). Any environmental studies would be required to be on the total acreage proposed for purchase by Clark County, even though portions of the area may be transferred over a period of years.

The lands authorized for transfer would be withdrawn, subject to valid existing rights, from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws. The withdrawal would continue in effect until the lands transfers are completed.

Section 104 would require right-of-way corridors on the lands comprising the Kerr-McGee and Apex Sites that are subject to the provisions of S. 624 to be reserved to the United States. The corridors would be administered by the Secretary who would be authorized to grant rights-of-way over, upon, under and through them consistent with title V of FLPMA. He would be required, to the maximum extent feasible, to locate rights-of-way so as to impact to the least extent possible the heavy industrial uses being carried out on the site.

Section 105 would require the Secretary to use funds received from the sale of lands under the bill to acquire environmentally sensitive lands or interests in lands in the State of Nevada which can be managed as part of an existing Federal land management unit. Such funds would be required to be deposited into an account in the United States Treasury which could not be obligated until appropriated. The funds would be used to carry out land exchanges or to purchase environmentally sensitive lands in the State to mitigate for the loss of public lands at the Apex Site. The Secretary would be required to consult with appropriate State and local officials and interested environmental organizations in determining the lands to be acquired.

Section 106 would require the Secretary, as soon as practicable after the date of enactment of this Act, to file legal descriptions of the lands to be transferred under this Act with the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

STATEMENT BY DANIEL S. RAK, DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE FOR ACQUISITION MANAGEMENT AND POLICY

Mr. Chairman, at the request of the subcommittee, I am submitting for the record a brief statement which is intended to summarize the DOD involvement in the ammonium perchlorate (AP) issue and how that relates to the legislation you are now considering. By

way of background, I believe it is important for the subcommittee to understand the circumstances that have caused Kerr-McGee to seek an alternate location for some of their plant operations.

Kerr-McGee and another company in Henderson, NV, Pacific Engineering and Production Company of Nevada (PEPCON), have for the last 25 years been the only producers of AP in the U.S. This product is an essential ingredient in the manufacture of propellant for every solid rocket motor used by the DOD and NASA. On May 4, 1988, a fire and explosion totally destroyed in PEPCON facility, which accounted for approximately one half of the U.S. capacity. On that afternoon, U.S. capacity for DOD and NASA requirements went from a 35 percent excess position to a 25 percent deficit. Since the U.S. is a large exporter, the worldwide capacity went from a 30 percent excess position to a 35 percent deficit. In more specific numbers, we project worldwide demand against U.S. capacity to exceed 60 million pounds per year while, Kerr-McGee, the only remaining U.S. supplier, can presently produce only approximately 40 million pounds per year.

It became clear on the morning of May 5, 1988, that extraordinary efforts would be required to avoid major impacts to some of the Nation's most important programs. Actions were set in motion to identify the magnitude of the problem and available alternatives. Within the next two days, the Air Force was designated as the lead service for DOD, a DOD/NASA Interagency Management Group was established, and I was designated to lead this group for DOD. The charter was quite simple: Manage available supplies of AP to minimize program impacts and restore the U.S. industrial base.

I won't dwell on the mechanics of managing the available supplies, but we consider these efforts have been very successful considering the circumstances. We are using the Defense Production Act to allocate the entire output of material from Kerr-McGee to end users. With some small exceptions, all DOD/NASA programs have had adequate supplies and will have at least through June of this year. In addition, we have supplied the U.S. commerce space industry and high priority defense programs of allied nations. As we had projected, the AP situation is now reaching a point where Kerr-McGee can no longer meet demands.

Starting on May 5, 1988, our first and highest priority was to set in motion those actions which would increase capacity. In short order, we did a market search of U.S. industry and concluded that only PEPCON and Kerr-McGee were reasonably capable of providing the industrial base within the 89/90 timeframe. Within two weeks of the accident, May 16th and 18th, PEPCON and Kerr-McGee presented their proposals to the Air Force and NASA for restoring AP production capacity.

The Government elected, as part of the solution, to provide investment incentives to PEPCON (which subsequently became Western Electrochemical Co., WECCO) to rebuild their facility at a site remote from their prior location in Henderson. In spite of the obvious financial difficulties caused by the explosion, PEPCON was selected since they offered the only reasonable chance of having additional capacity by the middle of 1989, the time major program impacts were projected to occur. The PEPCON construction is well

underway and initial production is expected to meet our target of July 1989. While some program impacts will occur during the remainder of 1989, they should be far short of the catastrophic impacts that would occur without the PEPCON facility.

The Government action, in the case of Kerr-McGee, was far more complicated. Here we had a perfectly adequate facility operating at full capacity, supplying virtually the entire need of DOD, NASA and other critical users during this interim period. The easy answer would have been to rebuild PEPCON and hope Kerr-McGee could continue to operate at their present location. But Kerr-McGee concluded that long term, future operation of the facility at its present location was in doubt. While all reasonable measures to ensure safe operation have been taken, there remains considerable anxiety within the community. Populated developments continue to encircle the Kerr-McGee facility. The Government concluded that it simply could not have such a critical facility at risk. Consequently, the Government and Kerr-McGee reached an agreement whereby certain long-term investment incentives would be provided to Kerr-McGee for relocating major portions of their facility to a remote site. One of these sites, Apex, is of course the reason for this statement.

I hope this short summary helps the subcommittee understand the interest we have in the Kerr-McGee facility. As a final point of the summary, I would like to reiterate the importance of the product and the facility to the United States. We have over 80 programs that depend on AP: Programs such as the Peacekeeper, Minuteman, Trident, and small ICBM strategic missiles; Titan IV and Delta II space boosters; AMRAAM, HARM, Sidewinder and MLRS tactical missiles. There is no foreseeable substitute for this material. We cannot afford, for any reason, to lose the Kerr-McGee facility.

Mr. Chairman, the Air Force, on behalf of DOD, has reviewed the legislation and has no objection to the transfer of the Kerr-McGee tract as proposed. The Air Force continues to have some major concerns with respect to development of other tracts in the Apex site. The southern-most portions of Apex lie along the extended centerline and less than 4 miles from the north-south runway of Nellis AFB. In our view, Nellis is a national asset that cannot be duplicated elsewhere in the United States. It is unique for Air Force training in that a combat training sortie can be conducted from engine start to ordnance-on-target without interruption by peacetime restrictions. Over 4,000,000 pounds of live ordnance each year depart to the north on flights directly over the Apex site. Since populated areas surround other portions of the base, only the Apex route remains fully suitable for extensive sorties with live ordnance. Since the Kerr-McGee tract lies in the northern quadrant some 12 miles away and north of the centerline, that single plant offers little basis for concern. However, extensive development in the southern quadrant could lead to future demands for overflight restrictions that could seriously impair the training mission of Nellis.

With two changes to S. 624, the Air Force would also not object to the proposed legislation for the remaining portions of the Apex site. The first change would be to obtain the concurrence of the

Secretary of the Air Force prior to transfer of each additional individual tract. The Air Force could then review the specifics of the proposed development for any adverse impact on Nellis operations. This change would recognize the importance of unrestricted access to Nellis, while not unreasonably impeding Clark County's ability to develop the area.

The second change is to retain for the Government, an avigation easement over the entire Apex site. Section 104 would statutorily reserve certain right-of-way corridors across the Apex site, but does not include an avigation corridor. While the legislation does not preclude retention of other easements not enumerated in the bill, the fact that an avigation easement did not merit inclusion as an enumerated easement casts doubt on the importance Congress attaches to this issue. Should the Congress elect not to include such easement in the bill, it is our understanding that the Air Force will be required to fully comply with the Federal Land Policy and Management Act of 1976 or other applicable law, including making applications for such an easement to a local BLM office and providing such justifications as would normally be required from any entity seeking an easement. In that process, values other than protection of Nellis AFB's operations could prevail, and the needed easement might be denied or restricted.

Mr. Chairman, the DOD clearly has an interest in seeing that Kerr-McGee has a safe and unrestricted site to continue their AP production operations. We understand the desire of Clark County to develop a heavy industrial zone outside Henderson and do not with to impede such development. However, encroachment of populated areas around Air Force facilities has been a severe problem for many years. We are convinced that neither the Congress nor Clark County intend these actions to impair the mission of Nellis AFB. But, populated encroachments are seldom intended to have that result—they seem to just evolve into that result. With the changes we are proposing, we believe both parties can achieve their objectives and that Nellis and Clark County can continue to enjoy their neighborly relationship for many more decades.

Thank you, Mr. Chairman, for the opportunity to present this statement on behalf of the DOD.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act H.R. 1485, as reported.

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